IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3158 of 2006
With
CIVIL APPLICATION No. 10134 of 2006

With

FIRST APPEAL No. 3208 of 2006
With
CIVIL APPLICATION No. 10230 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. - Appellant(s)
Versus
CHAMPABEN @ CHOCHIBEN JERAMBHAI HAPALIYA & 5 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 06/09/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Both these appeals are filed by the Bajaj Allianz General Insurance Co. Ltd. under Section 173 of the Motor Vehicles Act, 1988 for challenging the orders passed by the Motor Accident Claims Tribunal (Main), Rajkot under Section 140 of the Act in the respective claim petitions whereby the Tribunal has directed all the opponents in the respective claim petitions including the present appellant to pay Rs.50,000/- as compensation to the claimants in each petition on account of death of the concerned bread-winners in two separate motor vehicle accidents.

FACTS IN FIRST APPEAL No 3158 of 2006

2.1 MAC Petition No.1212 of 2005 is filed by the widow and children of Jerambhai Bhagwanjibhai Hapaliya who was riding a motor-cycle on 12.11.2005 at about 7-30 in the morning on the Rajkot-Ahmedabad Highway. The accident took place between Skoda Octavia Car owned by opponent No.1 in the claim petition and insured by Iffko Tokyo General Insurance Co. Ltd. (opponent No.2 in the claim petition). The motor-cycle in question which the deceased was riding was owned by opponent No.3- Bharatbhai M Rahadia and insured by the present appellant. On account of the serious injuries sustained by the motor-cyclist, the motor-cyclist was removed to a hospital where he succumbed to the injuries during the course of treatment. The widow and children of the deceased motor-cyclist have filed the above-numbered petition claiming compensation of Rs.20 lakhs. During pendency of the petition, the claimants also filed an application claiming interim compensation of Rs.50,000/- under Section 140 of the Act on the principle of 'no fault liability'.

2.2 The appellant insurance company contested the application and submitted that the deceased himself was driving the motor-cycle, but the insurance policy at mark 30/1 did not

cover the risk of the driver of the vehicle.

2.3 The Tribunal negatived the contention of the appellant-insurance company on the ground that the deceased, who was driving the motor-cycle in question, was not the owner of the said vehicle, that means he was not the insured of the vehicle in question and, therefore, he was a third party in the application under Section 140 of the Act. The Tribunal held that the deceased died in the motor vehicle accident involving the motor-cycle insured by the appellant and the Skoda car and, therefore, the owner as well as insurance companies of both the vehicles were jointly and severally liable to pay compensation under Section 140 of the Act. Accordingly, the impugned order came to be passed on 10.7.2006 whereby the Tribunal directed all the four opponents to pay jointly and severally a sum of Rs.50,000/- with interest at the rate of 10% p.a. from the date of the claim petition till payment, subject to final adjustment. The appellant has challenged the said order in First Appeal No.3158 of 2006.

FACTS IN FIRST APPEAL No. 3208 of 2006

3.1 First Appeal No.3208 of 2006 arises from Claim Petition No.948 of 2005 wherein also the Tribunal has passed a similar order under Section 140 of the Act. On 13.9.2005, the deceased was riding a motor-cycle and sustained serious injuries in the accident between the bus of the Gujarat State Road Transport Corporation and the motor-cycle insured by the present appellant. In this case also, the motor-cyclist sustained serious injuries and succumbed to the injuries. The widow and six minor children of the deceased filed Claim Petition No.948 of 2005 for compensation of Rs.40 lakhs. The said claimants also filed an application for interim compensation of Rs.50,000/- under Section 140 of the Act on the basis of the principle of 'no fault liability'.

3.2 In this case also, the insurance company contended that the policy did not cover the risk of the driver of the motor-cycle insured by the appellant – insurance company and, therefore, it was not liable to pay compensation either under Section 166 of the Act or under Section 140 of the Act.

3.3 In this case also, the Tribunal passed order dated 19.6.2006 directing all the three opponents i.e. the Gujarat State Road Transport Corporation, as well as the owner of the motor-cycle and the present appellant (insurer of the motor-cycle) to pay jointly and severally a sum of Rs.50,000/- with interest at the rate of 10% p.a. from the date of the claim petition till payment, subject to final adjustment. The appellant is, therefore, in appeal against the said order also.

CONTENTIONS ON BEHALF OF APPELLANT-INSURANCE COMPANY

4. Mr Vibhuti P Nanavati, learned counsel for the appellant-insurance company has submitted that -

(i) in each case the deceased himself was driving the concerned motor-cycle and, therefore, the deceased himself was the tort-feasor. Hence, the claimants are not entitled to receive any compensation either under Section 166 of the Act or under Section 140 of the Act. It is submitted that the Tribunal erred in not correctly interpreting the expression “third party” by treating the driver as the third party merely because he was not the insured.

Strong reliance is placed on the decision of this

Court in **United India Insurance Co. Ltd. vs. Jagatsinh Valsinh, 1986 GLH 573**. Reliance is also placed on the following decisions of the Apex Court -

(a) Dhanraj vs. New India Assurance Co. Ltd., 2005 ACJ 1;

(b) Oriental Insurance Co. Ltd. vs. Sunita Rathi, 1998 ACJ 121;

(c) New India Assurance Co. Ltd. vs. Sita Bai, AIR 1999 SC 3577.

(ii) It is also alternatively contended that the insurance policy issued by the appellant in each of these two cases did not cover any liability for compensation payable to the driver of the insured vehicle and that unless extra premium is paid for covering the risk of the driver/owner of the vehicle, the appellant-insurance company cannot be held liable to pay even interim compensation under Section 140 of the Act.

DISCUSSION

5. Section 140 of the Motor Vehicles Act, 1988 reads as under:-

"140 Liability to pay compensation in certain cases on the principle of no fault-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.

(emphasis supplied)

Contention (i)

6. With the insertion of Section 92-A in the Motor Vehicles Act, 1939 and embodiment of the said principle in Section 140 of the Motor Vehicles Act, 1988, in an application under Section 140

of the Act, the heirs of the deceased or the injured claimant are not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. This is clearly provided in sub-section (3) of Section 140. Sub-section (4) of Section 140 then clarifies that a claim for compensation under sub-section (1) of Section 140 shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement, the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. In other words, even the injured claimant who was himself responsible for causing the accident by his neglect or wrongful act or default is entitled to claim compensation from the owner of the vehicle under sub-section (1) of Section 140. Similarly, if the driver of the vehicle has died on account of the injuries received in a motor vehicle accident caused by his own wrongful act or neglect or default, even then his heirs are entitled to claim compensation under sub-section (1) of Section 140. This clarification given in sub-section (4) of Section 140 is a complete answer to the doubt sought to be raised on behalf of the insurer.

7. The very object of providing no fault liability through insertion of Section 92A in the Motor Vehicles Act, 1939 and through enactment of Section 140 in the Motor Vehicles Act, 1988 was to provide quick relief to the heirs of the deceased driver or to the injured driver, without undertaking any inquiry about his alleged negligence, default or wrongful act. The law in this behalf is already well-settled as per the decision of the Apex Court in K. Nandakumar vs. Managing Director, Thanthai Periyar Transport Corpn. Ltd., 1996 ACJ 555 = AIR 1996 SC 1217 = (1996) 2 SCC

736 wherein the Apex Court has explained the object underlying the provisions of Section 92-A of the Motor Vehicles Act, 1939 which is an absolute liability cast upon the owner of the vehicle to pay compensation in respect of death or permanent disablement resulting from an accident arising out of its use. In that case the claimant was riding a motor-cycle which collided with a bus belonging to the respondent. The claimant suffered permanent disablement and claimed compensation of Rs.2 lacs. The Tribunal as well as the High Court held the claimant to be negligent and on that ground refused to award even the compensation under Section 92A. The Apex Court held that on a plain reading of Section 92A, particularly sub-section (4), the claim for compensation on the basis of no fault principle could not have been defeated.

8. Very recently, the Scheme of Chapter X of the Act of 1988 containing Section 140 and other allied provisions has been examined by a Full Bench of this Court in **United India Insurance Co. Ltd. vs. Kadviben Udabhai Rathwa, 2006 (2) GLR 1257** and it has been held that an application under Section 140 of the Act is maintainable without filing an application for compensation under Section 166 or 163A of the Act, but if an application under Section 166 or 163A is filed, the compensation awarded under Section 140(1) shall be adjusted against any higher or equal amount of compensation awarded under Section 166 or 163A of the Act. In any case, the amount paid under Section 140 is not required to be refunded merely because a claim petition under Section 166 of the Act is dismissed on account of negligence of the claimant himself.

In Payalben Jayeshbhai Yagnik vs. Jayeshbhai G Yagnik, 2003 (2) GLH 555, one of us (K.M. Mehta, J) sitting as a Single Judge also had an occasion to examine the scope of Section 92A of the Motor Vehicles Act, 1939 and Section 140 of the Motor Vehicles

Act, 1988, and observed as under:-

> "The no fault provision as propounded in Section 92A of old Act (New Section 140) of the Motor Vehicles Act is in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose."

9. It is thus clear that the decision of this Court in United India Insurance Co. Ltd. vs. Jagatsinh Valsinh, 1986 GLH 573 (the accident there took place in 1981) and the decision of the Apex Court in Dhanraj vs. New India Assurance Co. Ltd. 2005 ACJ 1 dealt with claim petitions filed under Section 110B of the Motor Vehicles Act, 1939/Section 166 of the Motor Vehicles Act, 1988. These decisions will, therefore, not apply to cases where the applications are filed under Section 92A of the 1939 Act or under Section 140 of the 1988 Act.

10. In Oriental Insurance Co. Ltd. v. Sunita Rathi, 1998 ACJ 21 = 1998 (1) SCC 365, the Court was dealing with a motor vehicle accident which occurred on 10.12.1991 at 2-20 PM. The cover note was issued by the Insurance Company at 2-55 PM. The Tribunal and the High Court simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable. Disapproving the said conclusion, the Apex Court held that the liability of the insurer arises only when the liability of the insured has been upheld for the

purpose of indemnifying the insured under the contract of insurance. The Court held that in the facts of the case, the insurance commenced after the accident and, therefore, the insurance company was not liable under the contract to indemnify the insured. However, in the facts of that case, since the insurer had already paid compensation to the claimants, the insurer did not pressed for refund of the amount from the claimants to the insurer.

The same view was taken in New India Assurance Co. Ltd. vs. Sita bai, AIR 1999 SC 3577 = 1999 (7) SCC 575.

We fail to see how these decisions are of any avail to the appellant-insurance company, which had admittedly insured the motor-cycles involved in both the cases, much prior to the date of the respective accidents.

Contention (ii) Elaborated :

11. Now we will set out the next contention raised on behalf of the appellant – insurance company.

The learned counsel for the appellant-insurance company has submitted that Section 140, even while providing no-fault liability, does not expand the statutory liability of the insurance company which is only to cover the risk to the third party. Merely because the driver of one of the vehicles injured in a motor vehicle accident is not required to prove the negligence of the other driver or merely because compensation payable to the injured driver is not to be reduced by attributing any negligence to such injured driver who is the claimant, it does not necessarily follow that the insurance company which is not otherwise liable to cover the risk of the driver is fastened with the liability to cover

such risk to the driver. Section 140(1) does not super-impose any such additional liability to cover the risk to the driver of the vehicle. Under the provisions of Section 147(1) of the Act, the insurance company is liable to cover only the risk in respect of death or bodily injury to a third party. The driver of the vehicle in respect of which the insurance policy is issued is not a third party contemplated by the provisions of Chapter XI of the Motor Vehicles Act, 1988.

DISCUSSION

12. We may first examine the statutory scheme.

12.1 The liability of the owner under sub-section (1) of Section 140 is provided in Chapter X of the Act with the title, “Liability without Fault in certain cases”. Section 141 provides that the right to claim compensation under Section 140 in respect of death or permanent disablement of any person shall be in addition to any other right (except the right to claim under the Scheme referred to under Section 163-A of the Act) to claim compensation in respect thereof under any other provision of the Motor Vehicles Act or of any other law for the time being in force.

Section 144 gives over-riding effect to the provisions of Chapter X notwithstanding anything contained in any other provisions of the Motor Vehicles Act or of any other law for the time being in force.

12.2 Chapter XI contains provisions for compulsory insurance. Section 145 containing the definition clause defines 'liability' as under:-

> “145(C) “liability”, wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140.”
>
> (emphasis supplied)

12.3 Although the title to Chapter XI and the marginal note to Section 146 refer to “the insurance against third party risk”, sub-section (1) of Section 146 provides that, “no person shall use ... .. a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person a policy of insurance complying with the requirements of this Chapter”.

Section 147 provides for requirements of policies and limits of liability. Sub-section (1) thereof specifically provides that in order to comply with the requirements of this Chapter (Chapter XI), the policy of insurance must insure the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of the death or bodily injury to any person

... ., or

damage to any property of a third party

caused by or arising out of the use of the vehicle in a public place.

Sub-section (2) of Section 147 also provides that the policy of insurance shall cover any liability incurred in respect of any accident, subject to the ceiling of Rs.6000/- in respect of damage to any property of a third party.

13. Sub-section (1) of Section 147, therefore, refers to the property of a third party, but as far as the liability in respect of the death or bodily injury is concerned, it provides for covering the liability which may be incurred by the insurer in respect of the death of or bodily injury to “any person”. The wide expression “any person” has been narrowed down by the Apex Court by excluding the liability of the passengers in a goods vehicle or passengers in a private vehicle only on the ground that such liability is impliedly

excluded by the provisions of the proviso to sub-section (1) and of sub-sec.(2) of Section 147 of the Act or Section 149 of the Act. No such implied exclusion can be inferred in case of liability of the insurer in respect of the death or bodily injury of the driver of the vehicle. Moreover, the express provisions of sub-section (4) of Section 140 read with Section 145(c) negate even the possibility of any such inference being drawn.

14. In **Rikhi Ram vs. Sukhrania, 2003 (3) SCC 97**, a three Judge Bench of the Apex Court has defined the expression "third party" who can claim against the insurance company (reference is to analogous provisions of the 1939 Act) in paras 4 to 6 of the judgment as under:-

> "4. A perusal of Ss. 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risks, i.e. owner of the vehicle, property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows :
>
> > "Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person."
>
> 5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

> 6. On an analysis of Ss. 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer."
>
> (emphasis supplied)

15. Read in light of the above judgment, the corresponding provisions of the 1988 Act i.e. the provisions of Section 147 read with Section 140 do impose on the insurer the liability to pay compensation in respect of the death of or bodily injury to any person including the driver of a vehicle involved in the accident, notwithstanding the fact that the said driver had any alleged share in the responsibility for the accident resulting into his death or bodily injury.

16. In view of the above discussion, we have no manner of doubt in holding that the liability of the insurance company under Section 147(1) read with Sections 140, 144 and 145(c) of the Act covers the liability to pay compensation under the no-fault liability principle even to an injured driver or to the heirs of driver who dies in a motor vehicle accident.

17. It is thus clear that under Sections 145, 146 and 147 the owner of the vehicle is required to obtain a policy of insurance complying with the requirements of Chapter XI as well as covering the liability under Section 140 of the Act. It is, therefore, difficult to appreciate the contention urged on behalf of the appellant-insurance company that the liability under Section 140 of the Act is not covered by the policy when the driver of the insured vehicle sustains injuries or dies in a motor vehicle accident. By expressly

clarifying in sub-section (4) of Section 140, the Legislature has left no room for doubt that the compensation under sub-section (1) of Section 140 is payable even where the driver of the insured vehicle himself was negligent or had committed any wrongful act or default resulting into the accident. It is, therefore, not possible to entertain the submission that the insurance company is not required under the Act to cover the risk to the driver of the vehicle if no additional premium is paid for the driver.

18. At the fag end of arguments, Mr Nanavati for the appellant- insurance company submitted that since the owner of the motor-cycles in the two cases had not paid extra premium for covering the risk of the driver of the motor-cycle in question, the appellant-insurance company was not liable to pay even the compensation under Section 140 of the Act. The owner/driver of the vehicle was covered under the policy for personal accident cover of Rs.1 lakh on account of payment of premium of Rs.50/- and, therefore, there would be no liability to pay compensation under Section 140(1) of the Act.

19. This contention was not urged before the Tribunal and, therefore, we have not allowed the learned counsel for the appellant- insurance company to raise this contention before us.

20. If at all such a contention is available to the insurance company, it may raise the contention at the hearing of the application under Section 166 of the Act. This, however, does not detract from our finding that the insurer's liability under Section 147(1) read with Section 140(1) and 145(c) of the Act encompasses the liability to pay compensation on the basis of no-fault principle under Section 140(1) of the Act even in case of a driver who is alleged to be responsible in causing the accident in question. Section 140 does not permit any inquiry into allegation of

negligence to be entertained.

21. In view of the above discussion, we do not find any merit in these appeals.

The appeals are, therefore, summarily dismissed.

The amounts deposited before this Court at the time of filing the appeals shall be transmitted to the Tribunal.

22. Since the appeals are dismissed, the civil applications for stay are also dismissed.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

zgs/-